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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT

EXODUS FILM COMPANY, LTD., a United Kingdom corporation, and DAVID BERGSTEIN, an individual,

Plaintiffs,

v.

FILMYARD HOLDINGS LLC, a Delaware limited liability company, COLONY CAPITAL, LLC, a Delaware limited liability company, RICHARD D. NANULA, an individual, and DOES 1 through 20,

Defendants.

Case No.:

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COMPLAINT FOR:

1. **Breach of Contract**
2. **Breach of Contract**
3. **Breach of Contract**
4. **Fraud**
5. **Constructive Fraud**
6. **Promissory Estoppel**
7. **Unjust Enrichment**

DEMAND FOR JURY TRIAL

INTRODUCTION

1. This action arises from the acquisition of the Miramax Film Company ("Miramax") from The Walt Disney Company ("Disney") in 2010. Plaintiff David Bergstein became aware of the Miramax opportunity in late 2009 and was central to its eventual successful acquisition by Filmyard Holdings, LLC ("Filmyard"). It was Bergstein who recognized the unique and lucrative opportunity and the hidden value in Miramax, when the rest of the market believed that Disney was overvaluing it. Bergstein brought the opportunity to non-party Ronald Tutor ("Tutor"), and, during six months of negotiations with Disney, led the effort to evaluate, perform diligence on and value Miramax and its film library. Bergstein competed with multiple well-financed bidders for Miramax, and negotiated the creative structure of the acquisition and its highly favorable terms for the buyer with Disney's sophisticated legal team. Bergstein created a unique business plan that was ultimately put into place once the acquisition was completed. He supplied employees and consultants who worked on various aspects of the acquisition and arranged for carrying the substantial costs associated with the acquisition for many months. In short, but for Bergstein, the capital he expended and his considerable efforts, there would not have been a deal.

2. Once the structure of the transaction had been finalized and the press had already announced that the group led by Bergstein had won the competition to acquire Miramax, Defendant Colony Capital, LLC ("Colony") approached Tutor to participate in the acquisition. Colony's CEO, Tom Barrack ("Barrack"), enjoyed a long standing relationship with Tutor. When Colony first asked in, the deal was essentially done. The transaction was already structured in such a way as to permit financing, and the purchase agreement ("Purchase Agreement") with Disney had been negotiated. As part of its pitch to join the deal, Colony represented that it would invest $100 million of its own funds (as opposed to those of its investors). Colony was informed that the deal they were stepping into called for Plaintiffs to receive a non-dilutable 5% of the equity in the transaction, a 1% transaction fee and a substantial consulting agreement. Colony agreed.

3. As the signing of the Purchase Agreement approached, Bergstein, Tutor and Barrack met further. In order to facilitate fees that Colony was hoping to take for itself, Barrack asked Bergstein to reduce his interest by 1/3 from 5% to a still non-dilutable 3.33% with a promise that Colony would ask for no more reduction in Plaintiffs' interests. Although not obligated to do so, Bergstein agreed to Barrack's request so as to facilitate the deal and because of Barrack's promise that there would be no more cuts. Barrack, Tutor and Bergstein then shook hands on that agreement. Documents were executed reflecting, *inter alia*, Plaintiffs compensation and the Purchase Agreement, which bound the parties to a closing that ultimately occurred in December of 2010.

4. As soon as the ink was dry on the operative documents, however, Defendant Richard Nanula (one of Colony's principals and Miramax's new Chairman), and Colony's attorney Joshua Grode began hounding Bergstein to reduce his interest in Miramax. Plaintiffs are informed, and on that basis allege, that Nanula and Grode were motivated to reduce Bergstein's interest both to increase Colony's own fees and interests and to obtain interests Colony could then sell to its clients and investors. In particular, as the deal neared closing, Colony desired to swap out its own promised $100 million equity investment and instead provide one of its largest clients, Qatar Holdings, with a preferred interest in Miramax to compensate the Qataris for prior failed investments that Colony had sold to the Qataris. Defendants knew that they would be unable to demand a preferred interest for the Qataris in Filmyard if, as was actually the case, Bergstein controlled a non-dilutable interest with voting rights. Defendants' solution to this inconvenience was to set out to eliminate Plaintiffs from the equation.

5. Further, Grode had additional motivation to shave points off Bergstein's interest. Aside from his role as Colony's counsel, on information and belief, Grode has a beneficial interest in GHL & Company, an investment banking firm purporting to specialize in the media and entertainment industry. GHL maintains offices in New York and California, and its California offices are out of Grode's law firm, Liner Grode Stein

Yankelevitz Sunshine Regenstrief & Taylor LLP. On information and belief, Grode is the "G" in GHL (Peter Hoffman being the "H" and Sasha Lloyd being the "L"). On information and belief, GHL served as either a consultant or underwriter to provide the original debt for the Miramax acquisition and for a refinancing of the Miramax debt that, as set forth below, allowed Colony and the other investors in the Miramax transaction to retire all of their equity within one year of their investment. In the process, of course, GHL and Grode made, on information and belief, in excess of $15 million in fees (aside from the fees his law firm was paid for their legal services). The money to pay those fees had to come from somewhere and Grode realized that he could shove Bergstein out of the deal to take the fees for himself while the investors would be none the wiser or have reason to ask why their attorney was double dipping and earning millions in fees on top of his no doubt handsome legal fees. Grode never disclosed his relationship with GHL to Exodus and, on information and belief, never disclosed it to any other investor in the Miramax deal, other than Colony, as required by California Rule of Professional Responsibility 3-300.

6. Notwithstanding Defendants' efforts to reduce Bergstein's interests, Bergstein continued to do everything he could to make Miramax the success he knew that it would be for its new owners (including himself). Bergstein created a unique business plan, generated materials to operate the newly acquired business, educated the prospective employees of Miramax and initiated the major deals for exploitation of digital and streaming rights for Miramax's extensive library (with partners such as Netflix and Echo Bridge) consummated in Filmyard's first year. In fact, after the Miramax deal closed, Bergstein continued to reach out to Nanula and Grode to see how he could be of assistance. When Nanula or Grode did respond, it was only to attempt to harass Bergstein to reduce the compensation he was owed.

7. Bergstein's interests in the transaction had been documented in part through a Support and Service Agreement whereby Filmyard agreed to pay Exodus Film Company, Ltd. ("Exodus"), a wholly owned subsidiary of Veritum Limited, a company

owned by Bergstein, a $6.1 million "Closing Fee" and another $6.1 million deferred "Transaction Fee." Exodus is also entitled to a non-dilutable 3.33% interest in Filmyard pursuant to the First Amended and Restated Limited Liability Company Agreement for Filmyard. Accordingly, if Filmyard was to issue any additional shares in Miramax, they would need to provide Exodus a sufficient number of shares so that its percentage of the company would remain constant at 3.33%.

8. Filmyard paid the Closing Fee but has subsequently reneged on all further amounts and interests obligated to Bergstein and Exodus. While reneging on their promises to Bergstein lines Defendants' own pockets, Defendants' unlawful acts now appear to be motivated by additional concerns: to cover up lies they told their lender and other Colony investors. Plaintiffs are informed, and on that basis allege, that Defendants lied to Filmyard's lender and Colony investors by telling them that Bergstein would have no interest in Filmyard. Filmyard, Colony, Nanula and Grode therefore knew that Filmyard would not perform the promises to Bergstein to pay him fees and provide an equity interest through Exodus. But, Defendants knowingly led Bergstein to believe that they would make good their promises because they needed Bergstein to close the Miramax acquisition and to get the new business off the ground. Bergstein relied in good faith on those promises to successfully bring the Miramax acquisition to closing and a profitable start.

9. The Miramax acquisition closed in December 2010. The effective purchase price was approximately $590 million because of cash that had built up with Miramax prior to the closing. Filmyard borrowed $400 million to finance the closing but was able to reduce that debt through collections made within the first year of approximately $100 million. Within approximately one year of the closing, the acquisition was re-financed after an appraisal of Miramax for $825 million – a more than $400 million increase in equity value in just a year and in the middle of the Great Recession. Accordingly, Filmyard's equity in Miramax increased by more than 100% in one year, all during the worst economic environment in a generation. The new financing allowed Defendants to

retire the equity that they had invested in Miramax. On information and belief, Mike Lang, the CEO put in place by Richard Nanula to run Miramax after the closing, was recently fired. Despite Lang's failure, the equity value was still doubled within one year. The increase in equity was due solely to the fact that Bergstein had recognized the hidden value in this asset and created a unique plan to allow it to be easily realized. The acquisition was the great success for Defendants that only Bergstein had envisioned at the outset and Bergstein made it all come to pass.

10. Awash in this resounding success, Plaintiffs asked for what they were promised. At first, Defendants simply ignored Plaintiffs' request for information – such as the closing documents that would have shown how Defendants sold additional interests in Filmyard (diluting Plaintiffs' interest in the company in the process). When the cold shoulder was insufficient, Defendants escalated their efforts with threats, telling Bergstein to keep quiet or that he would get nothing whatsoever and asserting that no one would believe Bergstein because of negative press he had received regarding unrelated matters and that they would bury Bergstein under yet more accusations if he continued to seek what he was owed. Defendants have robbed Plaintiffs of their hard-earned compensation for bringing the Miramax acquisition to fruition. They have refused to make the Deferred Fee payment notwithstanding that it has been triggered and is now past due. They refuse to recognize any ownership or profit participation that Plaintiffs' own and refuse to provide any reports of accountings of Filmyard's activities. In short, Defendants have lined their own pockets to the tune of tens of millions of dollars while reneging on the compensation promised to the individual who made the highly lucrative deal happen for them. Plaintiffs are entitled to the compensation which they were promised.

PARTIES

5. Plaintiff Exodus Film Company, Ltd. ("Exodus") is a corporation organized under the laws of the United Kingdom with its principal place of business in California. Exodus is a Special Member of Defendant Filmyard and is a wholly owned subsidiary of

Veritum Limited ("Veritum") a corporation organized under the laws of the United Kingdom with its principal place of business in California.

6. Plaintiff David Bergstein ("Bergstein") owns Veritum, which in turn owns Exodus and at all times relevant herein acted on behalf of Exodus.

7. Defendant Filmyard Holdings, LLC ("Filmyard") is a limited liability company organized under the laws of Delaware with a principal place of business in Sylmar, California.

8. Defendant Colony Capital LLC ("Colony") is a limited liability company organized under the laws of Delaware. Colony is in the private equity business and is headquartered in Santa Monica, California. Colony maintains an investment in Filmyard, as do certain of Colony's investors, through various entities.

9. Defendant Richard Nanula ("Nanula") is a principal of Colony and on information and believe is a resident of Los Angeles County, California.

10. Plaintiffs are unaware of the true names and capacities of the defendants sued herein as Does 1 through 20, inclusive, and for that reason, sues said defendants by such fictitious names. Plaintiffs will amend this complaint to allege the true names and capacities of said fictitiously named defendants upon ascertaining the same. Plaintiffs are informed, and on that basis allege, that each fictitiously named defendant is responsible in some manner for and proximately caused the harm and damages alleged.

11. Although they do not believe it is necessary under the circumstances, and reserve all rights, Plaintiffs anticipate that they will seek leave of Court to add Grode as a co-defendant pursuant to California Civil Code section 1714.10.

JURISDICTION AND VENUE

12. Jurisdiction is proper in this Court. The amount in controversy exceeds $25,000. The members of Filmyard and Filmyard further agreed in the Filmyard First Amended and Restated Limited Liability Company Agreement to submit to the jurisdiction of any state or federal court sitting in Los Angeles.

13. Venue is proper in this Court for the foregoing reasons and because a

substantial part of the acts and omissions giving rise to the causes of actions alleged in this action occurred in Los Angeles County.

GENERAL ALLEGATIONS

14. In late 2009, Bergstein learned of an opportunity to potentially acquire Miramax from Disney. Miramax is a film company that held the rights to dozens of well-known films such as *Chicago, Good Will Hunting, No Country for Old Men, Shakespeare in Love, the English Patient,* and many others, along with lesser known film titles.

15. Bergstein contacted Disney and agreed to a non-disclosure agreement which allowed him to participate in the bidding process for Miramax.

16. Bergstein evaluated the Miramax transaction and, based upon his expertise and analyses, concluded that the Miramax acquisition was substantially more valuable than the market for Miramax suggested.

17. Bergstein therefore actively pursued the acquisition by involving Ronald Tutor as a potential investor in the acquisition, seeking debt financing for the acquisition, engaging legal counsel, and forming a special purpose entity to acquire Miramax called MM Media Acquisition Company Ltd. ("MM Media").

18. Through MM Media, Bergstein submitted a letter of intent ("LOI") to Disney and was rewarded with an invitation to participate in due diligence related to Miramax.

19. Bergstein took the lead in running due diligence for the acquisition with the participation of employees and consultants provided by Bergstein. Bergstein negotiated terms of the transaction documents with Disney and its sophisticated legal counsel. Due to the history of Miramax, the terms which needed to be embodied in an agreement were complex. Bergstein was able through well thought out negotiation to obtain agreement on terms that would prove to be very favorable to the ultimate buyer, while satisfying Disney's requirements. The transaction was also creatively structured in such a way as to allow for financing when such financing would otherwise have been difficult if not impossible to achieve. Bergstein put a substantial amount of his own time, energy and

money into the potential acquisition.

20. Unfortunately, in the Spring of 2010, a former business associate in unrelated business matters and a disgruntled former in-house lawyer for Bergstein conspired to generate a litany of negative press about Bergstein. In order to provide comfort to Disney, Bergstein and Tutor formed Plaintiff Exodus, and Tutor eventually took on a more visible role in the proposed acquisition. Bergstein, however, continued to negotiate the transaction with Exodus as the proposed acquisition vehicle. Bergstein continued to run due diligence, and to negotiate the transaction structure, terms and documents with Disney.

21. In or around June of 2010, once the structure of the deal was set and press reports had been widely circulated confirming that the Bergstein led group won the contest to acquire Miramax, Colony approached Tutor about participating in the Miramax acquisition. Colony is a private equity firm with headquarters in Santa Monica with substantial funds to invest for itself and also for its clients and investors.

22. Colony and two of its principals, Tom Barrack and Richard Nanula, were informed that the Disney-Miramax acquisition had been negotiated and that the structure of the deal was set. Seeing the tremendous opportunity that Bergstein had created, Colony wanted in. Barrack then approached his old friend, Ronald Tutor, to inquire about how Colony could participate. As part of his sales pitch to Tutor, Barrack represented that Colony would invest $100 million of its own capital into the deal. Barrack also stressed how Colony would be a team player and that it could add value in other ways – pointing out that Colony Principal Richard Nanula had formerly worked as CFO of The Walt Disney Company. However, Colony's participation was subject to, *inter alia*, agreeing to certain consideration owed to Bergstein in the deal: (1) a 5% interest to be held by the existing participants in the transaction on the buyer side (principally Bergstein), (2) certain expenses, including a 1% transaction fee to Bergstein, would have to be paid, and (3) Bergstein would receive a consulting agreement for at least two years following the acquisition. Barrack and Nanula were also told that the

buyer would absorb a number of key personnel who had worked with Bergstein in the past. Colony agreed to proceed and participate in the transaction on those terms.

23. Bergstein relied on the fact that Colony had agreed to those deal terms in continuing to work to close the acquisition and by not seeking alternative investors who would meet the same terms to which Colony had agreed.

24. By that time, the deal terms with Disney were substantially negotiated, and, as a result, Colony received already negotiated agreements with Disney for Miramax.

25. Shortly thereafter, Tutor, Barrack and Bergstein had an in-person meeting. Barrack asked that Bergstein agree to reduce his interest by 1/3 to 3.33% (but asked for no reduction in the fees or consulting agreement). Barrack specifically stated and agreed that, if Bergstein agreed to the reduction to 3.33%, no additional reductions would be asked for or made to Bergstein's interests in the acquisition. Barrack, Tutor and Bergstein shook hands on that agreement.

26. By the time Colony agreed to participate, Filmyard Holdings was the entity that would acquire Miramax. Filmyard was formed, and Exodus was admitted as its first Member on or about July 1, 2010. Effective July 29, 2010, a First Amended and Restated Limited Liability Company Agreement was prepared for Filmyard ("Amended LLC Agreement"). Upon the effective date of the Amended LLC Agreement, Exodus, Tutor and FYH-Bar Holdings, LLC were the Members of Filmyard.

27. Under the Amended LLC Agreement, Exodus was defined as a "Special Member." Exodus, which at one time had been the proposed acquisition vehicle, contributed "all of its right, title and interest in and to the Purchase Agreement and related transactions" to Filmyard. In exchange therefor, Exodus received 701,755 Units of Filmyard which represented a 3.33% interest in Filmyard. Colony demanded and eventually obtained the delta from Exodus – 1/3rd of the initially agreed 5% carry that the parties had agreed to upon Colony joining the buyer group for an entity that represented its interests, FYH-Bar Holdings, LLC. Pursuant to the Amended LLC Agreement, Exodus' Units are subject to anti-dilution provisions that prevent the interests

represented by those Units to be diluted by subsequent issuances of Units. The Amended LLC Agreement also contains other provisions granting the Special Members rights to approve certain transactions and other actions detrimental to their interests.

28. Of course, Exodus would never have agreed to relinquish its interest in the Miramax acquisition without the promise of a financial interest in Filmyard and relied on the promises Colony made in joining the buyer group and those contained in the Amended LLC Agreement in doing so. Exodus did not just have some amorphous promise of an interest – it has specific rights and guarantees as documented in the Amended LLC Agreement.

29. Exodus also negotiated a Support and Service Agreement ("Support Agreement") with Filmyard. Pursuant to that Agreement, Filmyard agreed to pay Exodus $6.1 million at closing of the Miramax acquisition (the "Closing Fee") and another $6.1 million as a deferred "Transaction Fee." The Transaction Fee was to be paid at the earlier of five years after closing or upon the occurrence of eight other specified events.

30. One event triggering obligation to pay the Transaction Fee is "the occurrence or guaranty by the [Filmyard] of indebtedness, in excess of the indebtedness incurred in connection with the Closing (without any reborrowing), whereby such borrowed funds are used in a material manner to either fund the making of a distribution to or for the benefit of the Company or its Members, or in consummation of one or a series of acquisitions by Filmyard]." Support Agreement, § 2.a.iii.

31. Through the substantial efforts of Bergstein, Filmyard was able to obtain a commitment for $250 million in financing from Comerica Bank. With that financing available, Filmyard entered into a Purchase Agreement with Disney at the end of July 2010. Defendants later replaced Comerica as the primary lender in the deal at the urging of Grode, who was instrumental in ultimately replacing Comerica as a lender so that his investment banking firm, GHL, could reap additional fees.

32. After the Purchase Agreement with Disney was signed, after agreements Filmyard and Plaintiffs had already been agreed to and executed and despite Colony's

promises to the contrary, Defendants set about to attempt to re-negotiate Bergstein's interests in the acquisition, notwithstanding his integral contributions in obtaining a signed Purchase Agreement and creating Filmyard's unique business plan.

33. Defendants circulated never executed drafts of an amended Filmyard LLC Agreement with Exodus' interests reduced to a 1.67% profit participation and attempted to coerce Plaintiffs to agree to a further reduction in their interests – without any justification or consideration. Plaintiffs are informed, and on that basis allege, that Colony, Nanula and Grode had self-interested motives for reducing Plaintiffs' interests. Most obviously, they sought to increase their own interests at Bergstein's expense. As set forth above, Plaintiffs did not know about Grode's relationship with GHL at this time because Grode never disclosed it. It was only after the deal had closed and once he had begun his efforts to ace out Bergstein in earnest that Plaintiffs discovered Grode's conflict of interest. Colony had also obtained poor investment results on other projects for Qatar Holding, LLC, a critical client of Colony's that invests the assets of the oil-rich government of Qatar. Colony was desperate to provide Qatar Holding with a preferred position in a highly successful investment – and feared that if Bergstein had an equity interest and voting rights in Filmyard, Colony would be unable to grant Qatar Holding a preferred position.

34. As the December closing for the Miramax acquisition neared, the suspicious nature of Grode and Nanula's actions started to come to light when they advised Bergstein that Tutor could not have any interest in Exodus. Apparently, they had represented to the lender and to Colony's investors that Tutor would not receive any fees related to the acquisition – a representation that was plainly untrue insofar as Tutor had an interest in Exodus which in turn was to receive the Closing Fee and Transaction Fee.

35. At Defendants' insistence, Bergstein and Tutor ensured that Tutor exited from Exodus.

36. Bergstein is informed, and on that basis alleges, that unbeknownst to him at the time Nanula's and Grode's misrepresentations extended far deeper. Plaintiffs are

informed, and on that basis allege, that Grode and Nanula failed to disclose the true nature and extent of Bergstein's involvement in the Miramax acquisition to Filmyard's lender and to its largest investor in the acquisition, Qatar Holding, LLC. Plaintiffs are informed, and on that basis allege, that Defendants never intended to honor their obligations to Bergstein. Rather, Defendants had placed themselves in a position where they could not fulfill those promises without endangering their relations with their lender and a large investor. Unable to alienate their lender and principal investor, on the one hand, and unable to make the deal work without Bergstein's efforts – Defendants chose instead to merely lie to their lenders and investors and to Bergstein until they no longer needed him.

37. The Disney-Miramax acquisition closed in December 2010. It is has been the great success that only Bergstein initially envisioned. The effective purchase price was only about $590 million because the cleverly negotiated Purchase Agreement caused substantial cash to build up in Miramax that inured to the benefit of the buyer. The $400 million in debt was rapidly reduced by post-closing collections of additional cash of approximately $100 million. As explained below, just one year after the closing, Filmyard successfully re-financed its debt at a much higher valuation than the acquisition price from just one year earlier.

38. At the time of the Closing, Defendants acknowledged the Support Agreement and Bergstein's critical efforts in closing the acquisition by paying the Closing Fee. After the closing, Bergstein continued to provide whatever assistance he could, while at the same time seeking to ensure that Exodus' 3.33% interest in Filmyard was protected. At first, Nanula and Grode professed to have other priorities and then they became difficult to contact. They refused to share the closing documents with Plaintiffs. Eventually, Bergstein was summonsed to a meeting with Nanula and Grode in mid-summer 2011. Nanula threatened Bergstein that if he continued to pursue his documented rights, Nanula would ensure Bergstein would "never see a penny." Nanula and Grode stated that Bergstein had been disgraced in the press and that they were

prepared to pile on with more allegations in an effort to destroy Bergstein's credibility. Nanula claimed for the first time that Tutor lacked the authority to sign the Support Agreement – even though Tutor had signed the Purchase Agreement with Disney and Filmyard had paid the Closing Fee documented within that Agreement. Notwithstanding the threats, Nanula and Grode assured Bergstein that, if he ceased requesting documentation, they would "fully honor" the agreements with Plaintiffs.

39. As it turned out, Defendants did nothing of the sort. Brief negotiations failed when Defendants offered far less than the compensation to which Bergstein was entitled. It is now clear that the meeting was simply designed to hush Bergstein and buy time.

40. Bergstein is informed, and on the basis alleges, that Filmyard completed a bond offering in or around late 2011 which refinanced the debt Filmyard assumed at closing. Such a transaction was widely reported in the press. The valuation obtained for the re-financing was approximately $250 million greater than the acquisition price from just one year earlier. Additionally, Filmyard had collected in excess $100 million in cash from Miramax's business operations within the first year. It is believed that the re-finance transaction would have allowed Filmyard's Members to retire most or all of their equity investment in Filmyard. However, Colony and its principal investor Qatar instead elected to pay all of the distributable proceeds to Qatar and for fees to Grode and Colony. In short, the re-financing was highly lucrative for Filmyard, Qatar (Colony's principal investor), Colony and Grode. It is believed that 70% of the cash equity was retired in the first year and highlights how enormously successful the Miramax acquisition that Bergstein spear-headed has been. Of course, pursuant to the anti-dilution provisions of the First Amended Filmyard Operating Agreement and other protections afforded to Plaintiffs' and their interest, Colony would have been unable to lavish Qatar with the overly generous deal it was getting.

41. The refinance transaction triggered the obligation to pay the Transaction Fee.

42. Neither Bergstein nor Exodus has received any reports on Filmyard's operations or finances nor have they received documents reflecting Exodus' Units or any distributions from Filmyard, in accordance with Exodus' rights as a Special Member. In sum, Plaintiffs have been treated as though they have no interest whatsoever in Filmyard.

43. Plaintiffs have been harmed in an amount to be proved at trial but in no event less than the amount of the $6.1 million Transaction Fee and the value of the Member interest and profit participation in Filmyard Defendants have failed and refused to recognize.

COUNT I

(Breach of Contract Against Filmyard – Support Agreement)

44. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 43 as if set out in full herein.

45. Exodus signed a valid and enforceable contract, the Support Agreement, with Filmyard under which Filmyard agreed to pay the Transaction Fee of $6.1 million. Attached hereto as Exhibit "A" is a true and correct copy of the Support Agreement.

46. Exodus has fully performed its obligations under the Support Agreement and/or those obligations have been waived or excused and all conditions, if any, to Filmyard's performance have occurred or been waived.

47. Plaintiffs are informed, and on that basis allege, that Filmyard refinanced its debt in a manner that triggered its obligation to pay the Transaction Fee.

48. Plaintiffs have demanded payment of the Transaction Fee, and Filmyard has failed and refused to pay the sum owed.

49. Filmyard has repudiated and breached the Support Agreement and damaged Plaintiffs in an amount to be determined at trial but in no event less than $6.1 million.

50. Plaintiffs are entitled to pre-judgment interest.

51. The Support Agreement provides for the reimbursement of attorneys' fees and costs to the prevailing party, and thus Plaintiffs are entitled to the recovery of their attorneys' fees and costs incurred in this action.

COUNT II

(Breach of Contract Against Filmyard – First Amended LLC Agreement)

52. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 51 as if set out in full herein.

53. The First Amended LLC Agreement of Filmyard constitutes an enforceable contract. A true and correct copy of the First Amended Operating Agreement of Filmyard Holdings LLC is attached hereto as Exhibit "B".

54. Exodus is a Special Member under the Amended LLC Agreement, and, pursuant to that Agreement, was entitled to 701,755 Units and all rights related thereto under the terms of that Agreement.

55. Exodus has fully performed its obligations under the Amended LLC Agreement and/or those obligations have been waived or excused and all conditions, if any, to Filmyard's performance have occurred or been waived.

56. Filmyard has failed and refused to comply with its contractual obligations to Exodus pursuant to the Amended LLC Agreement by refusing to acknowledge Exodus' ownership of Units and by withholding the rights and benefits of such ownership from Exodus.

57. Plaintiffs have been damaged by Filmyard's breach.

58. Exodus is entitled to specific performance in terms of the delivery of the Units owed to it and is entitled to all of the rights and benefits of the ownership of such Units.

59. In addition (or in the Alternative), Plaintiffs are entitled to damages in an amount to be determined at trial.

COUNT III

(Breach of Contract Against Filmyard – Consulting Agreement)

60. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 59 as if set out in full herein.

61. On multiple occasions detailed above, Bergstein agreed with Defendants

that he would be provided with a consulting agreement of not less than one year and that promised to pay Bergstein substantial compensation.

62. Bergstein was promised that this part of his compensation for putting together the Miramax acquisition would be fully documented after the closing.

63. Bergstein has at all times been prepared to fulfill the terms of the consulting agreement.

64. Defendants repudiated the agreement and have refused to perform.

65. Bergstein has been damaged in an amount to be proved at trial.

COUNT IV

(Fraud Against All Defendants)

66. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 65 as if set out in full herein.

67. Defendants made various misrepresentations of fact to Bergstein upon which Bergstein and Exodus relied to their detriment. As alleged above in detail, Defendants represented to Bergstein that they and Filmyard intended to honor their contractual obligations to Exodus and Bergstein when, in fact, they had secretly made contrary representations to others. Defendants had no intention to cause Filmyard to honor its contractual commitments to Exodus and Bergstein when those presentations were made, but instead intended to cause Filmyard not to perform.

68. While Grode acted as counsel to Colony and later Filmyard, he also had a personal financial stake in the acquisition because aside from his role as Colony's counsel, on information and belief, Grode is also a principal in GHL & Company, an investment banking firm purporting to specialize in the media and entertainment industry. GHL maintains offices in New York and California, and its California offices are out of Grode's law firm, Liner Grode Stein Yankelevitz Sunshine Regenstrief & Taylor LLP. On information and belief, Grode is the "G" in GHL (Peter Hoffman being the "H" and Sasha Lloyd being the "L"). On information and belief, GHL served as underwriter for a refinancing of the Miramax debt that, as set forth below, allowed Colony and the other

investors in the Miramax transaction to retire all of their equity within one year of their investment. In the process, of course, GHL and Grode made, on information and belief, in excess of $8 million in fees. The money to pay those fees had to come from somewhere and Grode realized that he could shove Bergstein out of the deal to take the fees for himself while the investors would be none the wiser or have reason to ask why their attorney was double dipping and earning millions in fees on top of his no doubt handsome legal fees. Rather, Plaintiffs are informed, and on that basis allege, that Grode made representations to Plaintiffs that were contrary to representations that he made to Filmyard's lender and certain of Colony's investors, rendering performance of the promises Grode made to Bergstein and Exodus impossible.

69. Exodus and Bergstein justifiably relied on Defendants' misrepresentations by, among other things, continuing to invest time, energy and money into the Miramax acquisition and working to make the acquisition successful after it was consummated. Exodus relied on Defendants' representations in contributing its rights to the Purchase Agreement and Miramax acquisition to Filmyard.

70. Nanula and Grode misrepresentations are attributable to Colony and Filmyard.

71. Defendants have acted with fraud, malice or oppression entitling Plaintiffs to an award of punitive damages.

72. The misrepresentations caused Plaintiffs damages in an amount to be determined at trial.

COUNT V

(Constructive Fraud Against All Defendants)

73. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 72 as if set out in full herein.

74. Bergstein and Exodus reposed trust and confidence in Nanula, Colony, Filmyard and Grode to protect their interests.

75. Colony and Nanula approached Tutor, Bergstein and Exodus with the

desire to invest and participate in the Miramax acquisition. They were permitted to become part of the acquisition team based upon their promise at the outset to abide by the terms of Bergstein's compensation for putting together the deal. Indeed, Colony and Nanula were told the terms under which they would be permitted to participate – an equity interest, a 1% fee and a consulting agreement for Bergstein – and specifically agreed to participate on that basis.

76. Exodus and Bergstein thus abandoned other efforts to secure investors who would meet those terms and, in fact, contributed Exodus' valuable rights to the Miramax acquisition to Filmyard.

77. By gaining Bergstein and Exodus' trust and confidence and by eliminating other competing investors with their promises, Colony and Nanula gained influence and power over Bergstein and Exodus because they became critical to the closing of the acquisition.

78. Colony and Nanula brought Grode into the acquisition. Colony, Grode and Nanula's acts are attributable to Filmyard.

79. Defendants used their ill-gotten power and influence to try to force Bergstein and Exodus to take less compensation than they were promised and then reneged on even the reduced amount of compensation that appears in the contracts described above.

80. Exodus and Bergstein justifiably relied on Defendants' representations and promises by, among other things, continuing to invest time, energy and money into the Miramax acquisition and working to make the acquisition successful after it was consummated.

81. Defendants have acted with fraud, malice or oppression entitling Plaintiffs to an award of punitive damages.

82. Defendants' constructive fraud caused Plaintiffs damages in an amount to be determined at trial.

COUNT VI

(Promissory Estoppel Against All Defendants)

83. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 82 as if set out in full herein.

84. Bergstein and Exodus invested a large amount of time and money in negotiating a highly favorable acquisition of Miramax from Disney, and Exodus had a strong prospective opportunity to engage in the transaction.

85. Colony and Nanula approached Tutor, Bergstein and Exodus with the desire to invest and participate in the Miramax acquisition. They were permitted to become part of the acquisition team based upon their promise at the outset to abide by the terms of Bergstein's compensation for putting together the deal. Indeed, Colony and Nanula were told the terms under which they would be permitted to participate – an equity interest, a 1% fee and a consulting agreement for Bergstein – and specifically agreed to participate on that basis.

86. On multiple occasions thereafter, Defendants promised that they would abide by their promises to compensate Bergstein and Exodus for putting together the Miramax acquisition.

87. Exodus and Bergstein actually, reasonably and foreseeably relied on Defendants by abandoning other efforts to secure investors who would meet those terms and, in fact, contributed Exodus' valuable rights in the Miramax acquisition to Filmyard. Plaintiffs also continued to work diligently toward the closing of the Miramax-Disney transaction.

88. Defendants have profited in the millions of dollars based upon the hard work of Plaintiffs to put together the acquisition. It would be a gross miscarriage of justice not to enforce Defendants' promises of compensation.

89. Defendants have acted with fraud, malice or oppression entitling Plaintiffs to an award of punitive damages.

90. Defendants' unfulfilled promises caused Plaintiffs damages in an amount to

be determined at trial.

COUNT VII

(Unjust Enrichment Against All Defendants)

91. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 90 as if set out in full herein.

92. Plaintiffs, in the alternative, seek compensation under the equitable doctrine of unjust enrichment. Plaintiffs invested a large amount of time and money in negotiating a highly favorable acquisition of Miramax from Disney.

93. Defendants have profited in the millions of dollars based upon the hard work of Plaintiffs to put together the acquisition and by virtue of their promises that induced Defendants to continue investing time, money and energy into closing the Miramax acquisition. It would be a gross miscarriage of justice not to fairly compensate Plaintiffs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request the following relief against Defendants:

A. That judgment be entered against Defendants on all counts in the Complaint;

B. That actual and consequential damages in an amount to be determined at trial be awarded to Plaintiffs;

C. Specific performance of the interests in Filmyard owed to Exodus;

D. That attorneys' fees, costs, and pre-judgment interest be awarded to Plaintiffs;

E. That punitive damages in an amount to be determined at trial be awarded to Plaintiffs;

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F. That a writ of attachment securing $6.1 million dollars plus interest, costs and attorney's fees be issued against Defendant Farmyard; and

G. Such other relief as the Court deems just and proper.

Dated: April 9, 2012

WEINGARTEN BROWN LLP
Alex M. Weingarten
Ethan J. Brown
Jeffrey K. Logan

By:_____
Alex M. Weingarten

Attorneys for Plaintiffs
Exodus Film Company, Ltd. and David Bergstein

DEMAND FOR JURY TRIAL

Plaintiffs Exodus Film Company, Ltd. and David Bergstein hereby demand a trial by jury.

Dated: April 9, 2012

WEINGARTEN BROWN LLP
Alex M. Weingarten
Ethan J. Brown
Jeffrey K. Logan

By:_____
Alex M. Weingarten

Attorneys for Plaintiffs
Exodus Film Company, Ltd. and David Bergstein